

ORIGINAL OPEN MEETING ITEM



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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



ARIZONA CORPORATION COMMISSION

22

Arizona Corporation Commission

DOCKETED

JAN 20 2005

DATE: January 20, 2005

DOCKET NO: T-04228A-03-0914

TO ALL PARTIES:

DOCKETED BY

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Order on:

CINCINNATI BELL ANY DISTANCE, INC.
(CC&N/RESELLER/AOS)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00 p.m.** on or before:

JANUARY 31, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

FEBRUARY 8 AND 9, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

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AZ CORP COMMISSION
DOCUMENT CONTROL

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1
2 **BEFORE THE ARIZONA CORPORATION COMMISSION**

3 **COMMISSIONERS**

4 JEFF HATCH-MILLER, Chairman
5 WILLIAM A. MUNDELL
6 MARC SPITZER
7 MIKE GLEASON
8 KRISTIN K. MAYES

9 IN THE MATTER OF THE APPLICATION OF
10 CINCINNATI BELL ANY DISTANCE, INC. FOR
11 A CERTIFICATE OF CONVENIENCE AND
12 NECESSITY TO PROVIDE RESOLD
13 INTEREXCHANGE TELECOMMUNICATIONS
14 SERVICES, AND ALTERNATIVE OPERATOR
15 SERVICES.

DOCKET NO. T-04228A-03-0914

DECISION NO. _____

16 **ORDER**

17 Open Meeting
18 February 8 and 9, 2005
19 Phoenix, Arizona

20 **BY THE COMMISSION:**

21 Having considered the entire record herein and being fully advised in the premises, the
22 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

23 **FINDINGS OF FACT**

24 1. On December 22, 2003, Cincinnati Bell Any Distance, Inc. ("Applicant" or "CBAD")
25 filed with the Commission an application for a Certificate of Convenience and Necessity
26 ("Certificate") to provide resold interexchange telecommunications services, except local exchange
27 services, and for alternative operator services ("AOS") within the State of Arizona.¹

28 2. Applicant is a switchless reseller that purchases telecommunications services from a

¹ CBAD is a subsidiary of Cincinnati Bell, Inc., formerly Broadwing, Inc. ("BI"). CBAD previously served as the marketing agent for Broadwing Telecommunications, Inc. ("BTI"). CBAD has 13 Arizona customers which receive resold interexchange service and AOS. The customers were specifically excluded from an earlier transaction approved by the Commission in Decision No. 66105 (July 25, 2003) which approved a sale of assets and customers by Broadwing Communications Services, Inc. ("BCSI") and BTI to CIII Communications Operations, LLC ("CIII"). BTI had been a wholly owned subsidiary of BCSI which was a wholly owned subsidiary of Broadwing Communications, Inc. ("BCI") which was in turn a wholly owned subsidiary of BI. As a result of Decision No. 66105, the Certificate awarded to BTI in Decision No. 60412 (September 26, 1997) was cancelled. Following the sale of assets to CIII, CBAD, the successor to BTI, was left with 13 customers and a decision was made to seek the Commission's approval for a Certificate to enable CBAD to continue to provide its reseller services and AOS in Arizona.

1 variety of carriers for resale to its customers.

2 3. In Decision No. 58926 (December 22, 1994), the Commission found that resold
3 telecommunications providers ("resellers") are public service corporations subject to the jurisdiction
4 of the Commission.

5 4. In Decision No. 57339 (April 5, 1991), the Commission found that AOS providers
6 were public service corporations subject to the jurisdiction of the Commission.

7 5. In Decision No. 58421 (October 1, 1993), the Commission adopted A.A.C. R14-2-
8 1001 through R14-2-1014 to regulate AOS providers.

9 6. CBAD, a Delaware corporation, has authority to transact business in the State of
10 Arizona.

11 7. On February 18, 2004, CBAD filed an Affidavit of Publication indicating compliance
12 with the Commission's notice requirements.

13 8. On December 20, 2004, the Commission's Utilities Division Staff ("Staff") filed a
14 Staff Report which includes Staff's fair value rate base determination in this matter and recommends
15 approval of the application subject to certain conditions.

16 9. In the Staff Report, Staff stated that CBAD provided audited financial statements from
17 its ultimate corporate parent, Cincinnati Bell, Inc., for the twelve months ending December 31, 2003,
18 which list assets of \$2.0 billion, equity of \$679.4 million and net income of \$1.3 billion.

19 10. According to the Staff Report, CBAD provides resold long distance service and AOS
20 in 48 states. In the event that Applicant encounters financial difficulty, there should be minimal
21 impact on long distance and AOS customers because of numerous competitors willing to replace any
22 provider.

23 11. In its Staff Report, Staff stated that based on information obtained from the Applicant,
24 it has determined that CBAD's fair value rate base ("FVRB") is zero. Staff has determined that
25 Applicant's FVRB is too small to be useful in a fair value analysis, and is not useful in setting rates.
26 Staff further stated that in general, rates for competitive services are not set according to rate of return
27 regulation. Staff has reviewed the rates to be charged by the Applicant and believes they are just and
28 reasonable as they are comparable to several long distance carriers operating in Arizona and

1 comparable to the rates the Applicant charges in other jurisdictions. Therefore, while Staff
2 considered the FVRB information submitted by the Applicant, the FVRB information provided
3 should not be given substantial weight in this analysis.

4 12. Staff believes that CBAD has no market power and that the reasonableness of its rates
5 will be evaluated in a market with numerous competitors. In light of the competitive market in which
6 the Applicant will be providing its services, Staff believes that the rates in Applicant's proposed
7 tariffs for its competitive resold interexchange services will be just and reasonable, and recommends
8 that the Commission approve them.

9 13. The Commission adopted maximum rates for AOS in Decision No. 61274 (December
10 14, 1998), and these rates are reflected in Schedules 1 and 2 attached to the Staff Report. These
11 maximum rates when coupled with discounting authority provide AOS providers with the ability to
12 compete on price and service quality.

13 14. Staff recommended approval of CBAD's application for a Certificate to provide resold
14 interexchange service and AOS subject to the following:

15 (a) The Applicant should be ordered to comply with all Commission rules, orders,
16 and other requirements relevant to the provision of intrastate telecommunications
17 service;

18 (b) The Applicant should be ordered to maintain its accounts and records as
19 required by the Commission;

20 (c) The Applicant should be ordered to file with the Commission all financial and
21 other reports that the Commission may require, and in a form and at such times as the
22 Commission may designate;

23 (d) The Applicant should be ordered to maintain on file with the Commission all
24 current tariffs and rates, and any service standards that the Commission may require;

25 (e) The Applicant should be ordered to comply with the Commission's rules and
26 modify its tariffs to conform to these rules if it is determined that there is a conflict
27 between the Applicant's tariffs and the Commission's rules;

28 (f) The Applicant should be ordered to cooperate with Commission investigations
of customer complaints;

(g) The Applicant should be ordered to participate in and contribute to a universal
service fund, as required by the Commission;

1 (h) The Applicant should be ordered to notify the Commission immediately upon
2 changes to the Applicant's address or telephone number;

3
4 (i) The Applicant's interexchange service offerings should be classified as
competitive pursuant to A.A.C. R14-2-1108;

5 (j) The Applicant's maximum rates for resold interexchange rates should be the
6 maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates
7 for the Applicant's competitive services should be the Applicant's total service long
run incremental costs of providing those services as set forth in A.A.C. R14-2-1109;

8 (k) In the event that the Applicant states only one rate in its proposed tariff for a
9 competitive service, the rate stated should be the effective (actual) price to be charged
for the service as well as the service's maximum rate;

10 (l) In the event Applicant seeks to change its rates, Applicant shall follow the
11 procedure as set forth in A.A.C. R14-2-1110;

12 (m) The Applicant is authorized to discount its rates and service charges to the
13 marginal cost of provide the services;

14 (n) The Applicant's interLATA rates and service charges for AOS should be based
15 on the maximum rates and service charges as set forth in Schedule 1 attached to the
Staff Report;

16 (o) The Applicant's intraLATA rates and service charges for AOS should be based
17 on the maximum rates and service charges as set forth in Schedule 2 attached to the
Staff Report;

18 (p) The Applicant's property surcharge for AOS be limited to \$1.00 per call; and

19
20 (q) If at some future date, the Applicant wants to collect from its resold
interexchange customers an advance, deposit and/or prepayment, Staff recommends
21 that the Applicant be required to file an application with the Commission for
Commission approval. Such application must reference the Decision in this docket
22 and must explain the Applicant's plans for procuring a performance bond.

23 15. Staff further recommended that CBAD's Certificate should be conditioned upon the
24 Applicant filing conforming tariffs in accordance with this Decision within 30 days from the date of
25 an Order in this matter.

26 16. Staff further recommended that if the Applicant fails to meet the timeframe outlined in
27 Findings of Fact No. 15, that CBAD's Certificate should become null and void without further Order
28 of the Commission, and that no time extensions for compliance should be granted.

17. CBAD will not collect advances, prepayments or deposits from customers.
18. The rates proposed by this filing are for competitive services.
19. Staff's recommendations as set forth herein are reasonable.
20. CBAD's fair value rate base is zero.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. Applicant's provision of resold interexchange telecommunications services and interLATA and intraLATA AOS except local exchange service in Arizona is in the public interest.

5. Applicant is a fit and proper entity to receive a Certificate as conditioned herein for providing competitive resold interexchange telecommunications services and AOS in Arizona.

6. Staff's recommendations in Findings of Fact No. 11, 12, 14, 15 and 16 should be adopted.

7. CBAD's fair value rate base is not useful in determining just and reasonable rates for the competitive services it proposes to provide to Arizona customers.

8. CBAD's rates, as they appear in its proposed tariffs, are just and reasonable and should be approved.

9. Pursuant to A.R.S. § 40-282(c)(2), a hearing is not required for the issuance of a Certificate to a reseller or an AOS provider.

ORDER

IT IS THEREFORE ORDERED that the application of Cincinnati Bell Any Distance, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive resold interexchange telecommunications services and AOS, except local exchange services, is hereby granted, conditioned upon its compliance with the condition recommended by Staff as set forth in Findings of Fact No. 15 above.

1 IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos.
2 11, 12, 14, 15 and 16 above are hereby adopted.

3 IT IS FURTHER ORDERED that Cincinnati Bell Any Distance, Inc. shall comply with the
4 adopted Staff recommendations as set forth in Findings of Fact Nos. 14 and 15 above.

5 IT IS FURTHER ORDERED that if Cincinnati Bell Any Distance, Inc. fails to meet the
6 timeframe outlined in Findings of Fact. No. 15 above that the Certificate conditionally granted herein
7 shall become null and void without further Order of the Commission.

8 IT IS FURTHER ORDERED that Cincinnati Bell Any Distance, Inc. shall not require its
9 Arizona customers to pay advances, prepayments or deposits for any of its products or services.

10 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

11 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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14 CHAIRMAN COMMISSIONER COMMISSIONER

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17 COMMISSIONER COMMISSIONER

18 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
19 Secretary of the Arizona Corporation Commission, have
20 hereunto set my hand and caused the official seal of the
21 Commission to be affixed at the Capitol, in the City of Phoenix,
22 this ____ day of _____, 2005.

23 BRIAN C. McNEIL
24 EXECUTIVE SECRETARY

25 DISSENT _____

26 DISSENT _____

27 MES:mj

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SERVICE LIST FOR: CINCINNATI BELL ANY DISTANCE, INC.

DOCKET NO.: T-04228A-03-0914

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ORIGINAL

OPEN MEETING ITEM



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COMMISSIONERS
JEFF HATCH-MILLER - Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES



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ARIZONA CORPORATION COMMISSION

2005 JAN 20 P 1: 20

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DATE: January 20, 2005

AZ CORP COMMISSION
DOCUMENT CONTROL

DOCKET NO: RR-03639A-04-0829

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Opinion and Order on:

UNION PACIFIC RAILROAD COMPANY
(UPGRADE CROSSING)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JANUARY 31, 2005

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

FEBRUARY 8 AND 9, 2005

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission
DOCKETED

JAN 20 2005

DOCKETED BY	
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BRIAN C. McNEIL
EXECUTIVE SECRETARY

1 **THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 JEFF HATCH-MILLER, Chairman
4 WILLIAM A. MUNDELL
5 MARC SPITZER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 THE CITY OF CHANDLER, ARIZONA TO
10 UPGRADE A CROSSING OF THE UNION
11 PACIFIC RAILROAD AT PECOS ROAD IN
12 MARICOPA COUNTY, ARIZONA, AAR/DOT NO.
13 741-674-P.

DOCKET NO. RR-03639A-04-0829

DECISION NO. _____

OPINION AND ORDER

10 DATE OF HEARING: January 6, 2005

11 PLACE OF HEARING: Phoenix, Arizona

12 ADMINISTRATIVE LAW JUDGE: Marc E. Stern

13 APPEARANCES: Mr. Timothy Sabo and Ms. Diane Targovnik, Staff
14 Attorneys, Legal Division, on behalf of the Utilities
Division of the Arizona Corporation Commission.

15 **BY THE COMMISSION:**

16 On November 18, 2004, the City of Chandler ("City") submitted to the Arizona Corporation
17 Commission ("Commission") a request for an Opinion and Order for the approval of an agreement
18 between the City and the Union Pacific Railroad Company ("Railroad") to upgrade the Railroad's
19 crossing at Pecos Road in Chandler, Maricopa County, Arizona, at AAR/DOT No. 741-674-P
20 ("Application").

21 On December 1, 2004, by Procedural Order, the Application was set for a hearing and the
22 City was ordered to notify any interested party of the Application and the hearing.

23 On December 9, 2004, the City certified that notice had been provided pursuant to the terms
24 of the Procedural Order.

25 On January 5, 2005, a full public hearing was held before a duly authorized Administrative
26 Law Judge of the Commission at its offices in Phoenix, Arizona. The Commission's Railroad Safety
27 Section was present with counsel. At the conclusion of the hearing, the matter was taken under
28 advisement pending submission of a recommended Opinion and Order to the Commission.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On November 18, 2004, the City filed an Application in which it requested an Opinion and Order from the Commission approving an agreement between the City and the Railroad to upgrade the existing Pecos Road public crossing in Chandler at AAR/DOT No. 741-674-P in the following manner: by widening the existing roadway from one lane in each direction to three lanes in each direction between McQueen Road and Dobson Road; by constructing raised concrete medians; by replacing the existing warning devices with new LED automatic warning devices with automatic gate arms; by adding two cantilever flashing signals; and by installing a new concrete crossing surface.

2. On December 9, 2004, the City filed certification that it had provided notice by registered U.S. mail of the Application and hearing thereon.

3. A hearing was held as scheduled on January 6, 2005.

4. The Application provides for the Railroad to install new LED flashing lights with automatic gates, flashing signals on two cantilevers and a concrete crossing surface at the crossing.

5. Staff testified that the cost apportionment for the installation of the crossing upgrade as provided in the Application is proper.

6. Staff has recommended that the Application be approved.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and over the subject matter of the Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and 40-337.01.

2. Notice of the Application was provided in accordance with the law.

3. Installation of the crossing upgrade is necessary for the public's convenience and safety.

4. Pursuant to A.R.S. §§ 40-336 and 337, the Application should be approved as

1 recommended by Staff.

2 5. After installation of the crossing, the Railroad should maintain the crossing in
3 accordance with A.A.C. R14-5-104.

4 **ORDER**

5 IT IS THEREFORE ORDERED that the City of Chandler's Application is hereby approved.

6 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall complete the
7 crossing upgrade as described in the Application within fifteen months from the effective date of this
8 Decision.

9 IT IS FURTHER ORDERED that the Union Pacific Railroad Company shall notify the
10 Commission, in writing, within ten days of both the commencement and the completion of the
11 crossing upgrade, pursuant to A.A.C. R14-5-104.

12 IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Union Pacific
13 Railroad Company shall maintain the crossing in compliance with the A.A.C. R14-5-104.

14 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

15 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

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17 CHAIRMAN _____ COMMISSIONER _____ COMMISSIONER _____

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20 COMMISSIONER _____ COMMISSIONER _____

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IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
Secretary of the Arizona Corporation Commission, have
hereunto set my hand and caused the official seal of the
Commission to be affixed at the Capitol, in the City of Phoenix,
this ____ day of _____, 2005.

BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: UNION PACIFIC RAILROAD COMPANY

2 DOCKET NO. RR-03639A-04-0829

3

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